

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 : CR-13-00072
 -against- :
 : United States Courthouse
 MARCOS ALONZO ZEA, : Central Islip, New York
 :
 Defendant. : April 20, 2015
 : 10:30 a.m.
-----X

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE SANDRA J. FEUERSTEIN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH, ESQ.
UNITED STATES ATTORNEY
610 Federal Plaza
Central Islip, New York 11722
BY: JOHN J. DURHAM, ESQ.
SETH DuCHARME, ESQ.

For the Defendant: MARK BOGATIN, ESQ.
277 Broadway, Suite 900
New York, New York 10007

Official Court Reporter: Ellen S. Combs, CSR
100 Federal Plaza - Suite 1180
Central Islip, New York 11722
Phone (631) 712-6107
Fax (631) 712-6123

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Ellen S. Combs, CSR
OFFICIAL COURT REPORTER

1 THE CLERK: 13-CR-72, United States vs Marcos
2 Zea.

3 State your appearances.

4 MR. DURHAM: John Durham and Seth DuCharme for
5 the United States.

6 Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. BOGATIN: For the defendant, Mark Bogatin.
9 Good morning, your Honor.

10 THE COURT: Please be seated.

11 Be assured I have read all of the submissions
12 that have been made in this case.

13 MR. BOGATIN: Your Honor, can I just ask; did
14 the Court read the late filing last Thursday by ECF, my
15 reply memo?

16 THE COURT: I have read everything.

17 MR. BOGATIN: Okay, good.

18 THE COURT: That being said, I understand,
19 correct me if I'm wrong, that you are in agreement about
20 the presentence report with the exception of one issue.

21 Am I correct?

22 MR. BOGATIN: Yes, your Honor. That is fair and
23 correct.

24 THE COURT: The government approves the
25 probation report?

1 MR. DURHAM: We do, your Honor.

2 THE COURT: Would you like to state your one
3 objection on the record.

4 MR. BOGATIN: Yes, your Honor.

5 The defendant objects --

6 THE COURT: Excuse me for just a minute.

7 (There was a pause in the proceedings.)

8 THE COURT: You may be seated if you wish, if
9 it's more comfortable for you.

10 Okay, that being said, aside from it's fine with
11 me if you sit down, I would also like you to know that if
12 we can't hear you I'll ask you to sit down. So you may
13 stand or be seated. But if it brings you closer to the
14 microphone and you need that, then I'll ask you to sit.

15 MR. BOGATIN: I'm perfectly happy, your Honor.

16 THE COURT: That is fine.

17 MR. BOGATIN: With regard to the guidelines
18 calculation; the defendant believes that the terrorism
19 enhancement which moves the defendant to a Level 12 does
20 not and should not apply on the facts.

21 We believe that there is no evidence in this
22 case to satisfy the standard articulated in the case law
23 that we have set forth in our sentencing memorandum.

24 The Second Circuit states in United States vs
25 Stewart --

1 THE COURT: I read all of that, yes.

2 MR. BOGATIN: And under the cases it is not
3 enough to show that the defendant somehow aided some
4 organization which may satisfy the requirement for the
5 enhancement. The evidence showed that the defendant
6 himself, specifically had to commit this crime of
7 terrorism to retaliate against the government, to
8 influence government conduct.

9 I think the case of Stewart, USA vs Stewart is
10 very close to our case, very close to our case. And in
11 that case the Second Circuit affirmed denial of the
12 enhancement to us and or to Yousry who was the translator
13 who helped the attorney named Stewart in her efforts to
14 aid the client's sheikh, which obviously was an error, and
15 to influence government conduct. And the translator --

16 THE COURT: So you're putting the attorney Lynne
17 Stuart in the same position as your client?

18 MR. BOGATIN: No, no. The translator, the
19 translator was the one that the judge, the District Court
20 judge said the enhancement does not apply. The Second
21 Circuit said we affirm the enhancement does not apply.
22 The evidence did not show that the translator's conduct --

23 THE COURT: Did the translator, Mr. Bogatin,
24 give funds and other support to a terrorist organization?

25 MR. BOGATIN: Aided by a sheikh and he aided

1 Ms. Stuart in their efforts to communicate to the violent
2 jihad group in Egypt they should end the cease-fire and
3 launch jihad.

4 THE COURT: I'll ask you to sit down.

5 Did the translator give financial or other
6 actual support to a named terrorist organization.

7 MR. BOGATIN: No, your Honor, no. The answer to
8 that is, no.

9 And we believe though, that the evidence in that
10 case of course, the evidence shows the intent of the
11 defendant being sentenced to a fact to influence
12 government conduct. There is none of that evidence in
13 this case.

14 THE COURT: Let me ask you this.

15 You agree that the organizations named, are
16 named, they're terrorist organizations. Do you agree?

17 MR. BOGATIN: Yes, correct, of course, yes.

18 THE COURT: And you agree that your client gave
19 financial support to those organizations and offered, was
20 offering both himself and other people aiding other people
21 to aid those organizations?

22 MR. BOGATIN: Yes. We agree that the defendant
23 offered himself to travel to AQAP to join the group. That
24 is the plea.

25 THE COURT: And why was he doing that, if not

1 for support, to support those organizations?

2 MR. BOGATIN: There is no evidence in the record
3 from -- there was a lengthy investigation we had with
4 tapes of many, many hours and hours of tapes. The
5 government has pointed to, they pointed to evidence of the
6 codefendant --

7 THE COURT: I know, and I read all of your
8 papers. But my question is, Then why was he going there?

9 MR. BOGATIN: There are many different reasons
10 why somebody could --

11 THE COURT: Well give me one. Did he want to
12 see the desert, or what was it?

13 MR. BOGATIN: No. He had planned and he
14 allocuted his intent was to join a AQAP. But you can join
15 that organization and go there without intending to do
16 certain things. And the government --

17 THE COURT: Such as what? Really, I'm asking
18 you, what?

19 MR. BOGATIN: There is no evidence that he was
20 going to wage war against the Yemen government or whether
21 he was going to wage war against the US government. No
22 evidence he intended to do any of that. There is no
23 evidence that this individual, this man had that intent.
24 The government has the burden in this proceeding to point
25 to evidence in the investigation, the one year two year

1 investigation, for which they can point to the Court that
2 this was his intent. That it was to fight a government,
3 fight that government or fight our government. There is
4 no evidence in this proceeding in which the Court, we
5 submit, the Court can make a finding that he intended to
6 fight any government.

7 THE COURT: Okay, I thank you.

8 And I will ask the government, because I think
9 they have much to say on this, much of which was included
10 in their last letter.

11 MR. DURHAM: That's correct, your Honor.

12 And the Court heard, and the jury asked
13 questions of what was this defendant's intent when he
14 attempted to travel? What was his intent when he provided
15 assistance, both financial support as well as providing
16 encouragement to co-conspirators who were going to travel,
17 who expressed the intent to commit murder and violent
18 operations while he was over there.

19 Here this isn't even remotely a close question,
20 your Honor. There is no dispute that AQAP is a terrorist
21 organization. This defendant allocuted that he intended
22 to join this organization. And this organization had no
23 other purpose other than to attempt to influence
24 government conduct with intimidation, and terrorist acts
25 in retaliation of governments such as the United States,

1 such as the Yemen government, such as our other western
2 allies who take positions and views that are contrary to
3 al-Qaeda's views of the world.

4 I think there is also a dispute when the Court
5 looks at different incidents that AQAP has been involved
6 in. We cited a number of instances. An instance involved
7 a plane on Christmas day 2009. And in October of 2010
8 they attempted to send explosives through cargo packages.

9 That is during a period of time when this
10 defendant converted to Islam and he became radicalized.
11 He was reading Inspire magazines. All of these things
12 were the subject of those magazines, and all of that was
13 this defendant's intent in terms of what he was planning
14 to do when he traveled to Yemen.

15 Moreover, judge, there is evidence in the
16 record -- maybe not in the record in which this defendant
17 pled, but in the discovery we provided to counsel -- there
18 are recordings in which the defendant discusses his views
19 about Yemen about Sharia laws.

20 One of the central focuses of the violence that
21 is brought on by Yemen is AQAP and their allies fighting
22 with the enemy governments. The secular Yemeni government
23 imposes the imposition of Sharia law. There are extensive
24 discussions in the recordings we provided. There are
25 conversations where the undercover was present in which

1 this defendant expressed his views about AQAP, about
2 Sharia law, about fighting with the Yemeni government.

3 There also have been cases on the trial,
4 including testimony of multiple witnesses. There was no
5 doubt what this defendant's intent was when he traveled.

6 The Court doesn't even need to reach all that.
7 Given the fact that this defendant allocuted he was going
8 to join AQAP is squarely within the law, bolstered by
9 Section 3A1.4 of the guidelines as well as 2332 Section
10 (b)(g)(5) in the code that defines what the federal crime
11 of terrorism is, and that the defendant's conduct is
12 squarely within that conduct.

13 THE COURT: Anything else?

14 MR. BOGATIN: Your Honor, I disagree slightly
15 with my brethren over here in terms of what the tapes
16 show. And I agree that the Court doesn't have to go to
17 the tapes at this point.

18 But I have viewed the tapes just as opposing
19 counsel has. And there is nothing in the tapes comparable
20 or anywhere near the level of specific intent that the
21 codefendant exhibited, that the defendant -- that the
22 government concluded in their papers.

23 Thank you.

24 THE COURT: Well, I think the government's April
25 14th letter clearly lays out enough to meet the specific

1 intent that is necessary.

2 And frankly I think it is somewhat disingenuous
3 to state that someone who supports, apparently in every
4 was, a particular group that has a particular purpose, is
5 not interested in furthering those goals and does not have
6 an intent to do so.

7 Anything further?

8 MR. BOGATIN: Not on that point, your Honor.

9 THE COURT: Anything else then?

10 MR. BOGATIN: On the sentencing? Yes, yes your
11 Honor.

12 THE COURT: No, as far as --

13 MR. BOGATIN: Nothing on the PSI, nothing else
14 on the guideline issue.

15 Well I'm sorry, I misspoke.

16 There is that letter I wrote with the factual
17 issues, and the government believes that are not material
18 and I join in that. But that's in the papers.

19 THE COURT: You join in that?

20 MR. BOGATIN: I join in their position that
21 items that we disputed are not material, and we ask the
22 Court not to consider them.

23 THE COURT: And therefore there will not be a
24 Fatico Hearing on those issues.

25 MR. BOGATIN: Yes.

1 THE COURT: Understood.

2 So, let me state clearly that I believe, having
3 read everything, that the terrorism enhancement applies
4 here. And therefore, the probation report is accepted in
5 its entirety.

6 Now on the issue -- does the government have any
7 objections?

8 MR. DURHAM: No, your Honor.

9 THE COURT: Now, is there anything you wish to
10 say in addition to what you have submitted which is all
11 part of the record, on behalf of your client prior to
12 sentencing?

13 MR. BOGATIN: Yes, your Honor.

14 The defendant is 26 years old. And he was
15 charged and has been convicted of a very serious offense.
16 He has a large number -- he comes from a large family, all
17 of whom, or many of them are here today.

18 THE COURT: And who have written letters.

19 MR. BOGATIN: Have written letters. And I know
20 the Court has considered and read them.

21 And your Honor, just a point I would like to
22 stress is that the guidelines as calculated in the PSR and
23 recommended sentence by the government, 25 years is the
24 maximum under the plea agreement if it is accepted by the
25 Court, would be --

12
1 THE COURT: And that was an agreement signed by
2 your client.

3 MR. BOGATIN: Yes. It is the maximum. Which
4 means --

5 THE COURT: So you're seeking a sentence beneath
6 the 300, the 300 month agreed upon maximum, correct?

7 MR. BOGATIN: Yes, maximum, yes, we are, yes.

8 And your Honor, if you look at, I know your
9 Honor has looked at it, we have conducted a review of
10 sentences in comparable cases, federal.

11 THE COURT: Yes. But let me just say about
12 that, to make it clear.

13 You are actually relying upon, just so it's
14 clear for the record, although it is here from your
15 submissions, that you are relying upon press releases from
16 the Department of Justice. That is the entirety of your
17 submissions on this issue. Am I correct?

18 MR. BOGATIN: Not the entirety. We also cite
19 some cases and we cited the District Court decision in
20 United States vs Warsame, where a judge was faced with a
21 defendant convicted of the same crime, the same offense as
22 this defendant. That District Court judge conducted a
23 review of sentences handed down from the courts, the
24 federal courts for other cases. He looked at a number of
25 cases. And that judge -- in that case you have a

1 defendant whose conduct was much more culpable than
2 Mr. Zea.

3 THE COURT: Did you read the probation report
4 Mr. Bogatin?

5 MR. BOGATIN: I did not read the probation
6 report. I certainly read the probation report's decision.

7 But in terms of the press releases, I think CNN
8 or Fox News --

9 THE COURT: -- you went to the Department of
10 Justice.

11 MR. BOGATIN: -- the Department of Justice. And
12 these are, I submit is an extremely reliable choice.

13 THE COURT: You may submit that. .

14 MR. BOGATIN: And these are cases --

15 THE COURT: They're press releases. They are
16 not the entirety of the submissions that were considered
17 by the judge, certainly you will agree.

18 MR. BOGATIN: That is correct. That's what I
19 said.

20 I haven't heard anything from the government
21 saying this is not representative because of this, or not
22 representative of that, because --

23 THE COURT: I don't think -- well I'm certainly
24 not going to think that. They may be representative of a
25 superficial examination. But certainly they are not

1 representative of an in depth examination of each
2 defendant's 3553 factors, or cooperation agreements, or
3 plea agreements, or things of that nature.

4 MR. BOGATIN: Your Honor, there are defendants
5 who cooperated whether it is cases where someone
6 cooperated, I left those cases out. Obviously cooperating
7 cases are not this case.

8 But if you look at those cases, people that get
9 25 years are usually people who went to trial, or people
10 who have conspired to commit much more horrific acts, or
11 horrific acts, which are not present in this case.

12 In the sense, if you look at people who get a 25
13 years sentence, you have people who are convicted at
14 trial, his hostages taken. You have people who have
15 conspired to blow up public buildings, monuments; people
16 who have made attempts on the life of a president.

17 And one of the most interesting defendants is
18 Victor Bauer who has drugs -- not drugs, arms trafficking.
19 He was convicted at trial of providing millions of
20 dollars worth --

21 THE COURT: And your client didn't have --

22 MR. BOGATIN: What?

23 THE COURT: I'm assuming you're client didn't
24 have access to millions. But go ahead.

25 MR. DURHAM: And he wasn't convicted after

1 trial. So I think --

2 THE COURT: What do you think would be fair,
3 Mr. Bogatin?

4 MR. BOGATIN: I think, I think a ten year
5 sentence would not be, would be proportionate, would be in
6 line with the cases that, of other defendants who have
7 been convicted based on comparable conduct. We have a man
8 who never --

9 THE COURT: Was convicted.

10 MR. BOGATIN: No, never set foot, he never, met
11 with terrorists, he never spoke with terrorist, he never
12 -- any type of terrorist acts. He never made it to Yemen.

13 THE COURT: That was fortuitous.

14 MR. BOGATIN: It was fortuitous, there is no
15 question about that.

16 But there is a truly a distinction in criminal
17 law between people who commit an offense and people who
18 attempt to commit it. Whether it was fortuitous or not,
19 there's still a different level of culpability. And it's
20 reflected in sentences.

21 I think it's hard to find anybody in his
22 situation with a 20 year sentence, or even a 15 year
23 sentence. Certainly nobody got a 20 year sentence,
24 somebody who tried, whose conduct was to get on a plane
25 and attempt to travel, was not successful, and came back.

1 You know, somebody who did not himself, did not inflict
2 any injury, never plotted any injury. He never conspired
3 to commit any injury.

4 And I just think that you should consider -- a
5 25 years sentence would make this case an outlier for the
6 range of federal terrorism cases across the nation. This
7 would be factually disproportionate. And with the Osama
8 case of people who actually met with Osama bin Laden, who
9 worked for al-Qaeda in that country, who received
10 training. And federal judge in that case looked at all
11 the other comparable cases. And he looked at the case of
12 a Hamdan, and he was given a sentence of five years. And
13 the case of the Lackawana Six, which was a Federal Court
14 case.

15 THE COURT: I'm aware of that.

16 MR. BOGATIN: And they received sentences, I
17 believe, of five and-a-half to ten years.

18 I had think that 25 years for this man, based on
19 what he actually did would be vastly disproportionate.
20 And I think the argument in this case is, the guideline
21 sentence which is 25 years according to the plea
22 agreement, the guideline sentence of 25 years would be
23 disproportionate to the defendant's conduct, what he
24 actually did and would render his sentence
25 disproportionate.

1 THE COURT: Actually the guidelines, when we
2 begin were actually higher, right?

3 MR. BOGATIN: The guidelines were life.

4 THE COURT: Thirty to life.

5 MR. BOGATIN: Yes, were 30 to -- well the
6 guideline --

7 THE COURT: I just want the record to be clear,
8 right.

9 MR. BOGATIN: Yes, it's in the report. We have
10 a plea agreement.

11 THE COURT: Correct.

12 MR. BOGATIN: And effectively, your Honor, what
13 I'm suggesting is that the guidelines purpose is to avoid
14 disparity.

15 THE COURT: At the beginning, yes. That is the
16 purpose of the guidelines, and it is a beginning.

17 MR. BOGATIN: And I think that the purpose in
18 this case is still served by looking at the guideline
19 sentence. Because if you look at cases around the nation
20 in Federal Court, people in his situation who never
21 committed a violent act, never met, or never set foot over
22 there, don't get 25 years. I think it would be, in every
23 sense of the word an unfair sentence and a
24 disproportionate sentence.

25 THE COURT: He served how much time?

1 MR. BOGATIN: I think it's one and-a-half years,
2 18 months, so one and-a-half years.

3 THE COURT: All right. Thank you.

4 MR. BOGATIN: Thank you, your Honor.

5 THE COURT: Government wish to respond?

6 MR. DURHAM: Briefly, your Honor.

7 In the instant matter the Court has already
8 found we agree with the guidelines calculation in the
9 presentence report. That would mean 360 months to life.

10 I think in the count of conviction in effect the
11 guideline range was applied. The government has already
12 shown this defendant agreed to a 25 year cap. We agreed
13 upon a 25 year sentence which is below the viable
14 guideline range. So we have already shown leniency to
15 this defendant.

16 I don't want the Court to mistake our leniency
17 with weakness. There is overwhelming evidence of this
18 defendant's guilt. I know the Court has read our
19 sentencing memo, so I'm not going to repeat everything we
20 said in there. But I do want highlight a couple of things
21 for the Court.

22 When the Court considers the factors specified
23 under 3553(a), this is extremely serious conduct.
24 Mr. Bogatin's sentence memo acknowledges that it's
25 serious.

1 THE COURT: Also in open court this morning.

2 MR. DURHAM: He has focused on this defendant's
3 attempts to provide support to AQAP. Out of that count of
4 conviction there is also obstruction of justice, which I
5 think is not present in many of those cases that he cited
6 and also makes this a more serious offense.

7 I think this defendant's characteristics are
8 also important factors. And while he has no criminal
9 history, he was born and raised in the United States. He
10 went to school in Brentwood. He has family who are here
11 today. There are letters. They appear to be supportive.
12 They appear to be decent hard-working people. But despite
13 all of that, and despite a good family, despite being born
14 and raised here, working here, he elected to betray the
15 government and join al-Qaeda; an organization that is
16 sworn to the destruction of this country.

17 This is extremely serious conduct. And in
18 particular I want the Court to think about deterrence.

19 THE COURT: And taking responsibility for
20 horrific acts of violence.

21 MR. DURHAM: That's correct, your Honor, taking
22 responsibility, and frankly plotted many other horrific
23 acts which have been disrupted.

24 But in terms of deterrence, we ask the Court to
25 consider both general deterrence and specific deterrence.

1 When I say, general deterrence, in response to
2 the threat the US Government has made it increasingly
3 difficult for foreigners to come to the United States.
4 And al-Qaeda, and other groups have responded to that.
5 And what they've done is they have tried to recruit
6 homegrown terrorists, and have done so thorough, and in
7 such a magnitude on the Internet. And when this defendant
8 was arrested --

9 THE COURT: Wasn't he featured in an article
10 here?

11 MR. DURHAM: Following his arrest, your Honor,
12 the spring of 2014 issue of Inspire actually included a
13 photograph of the defendant and a note about his arrest.

14 And the hard drive of his computer showed that
15 he had been reading the Inspire magazine before he
16 attempted travel to Yemen.

17 But the risk here obviously is great. A US
18 citizen can travel overseas and return to the United
19 States and move about within the United States and has
20 specific knowledge of things here. And as we have stated
21 in our memo, this isn't just a hypothetical concern.

22 There are a litany of examples of people who
23 have traveled overseas and have returned and done
24 terrorist acts. We tried the case of Vinas. He was
25 another Long Islander. He traveled to Pakistan. He

1 joined al-Qaeda. He received training. He participated
2 in rocket attacks against US troops over there.

3 He also provided information about the Long
4 Island Rail Road, and provided that to al-Qaeda and
5 plotted attacks. That is an example of why this is a
6 serious offense.

7 The Court doesn't have to look much further than
8 the Boston bomber. That's somebody who lived here,
9 traveled overseas, was further radicalized, returned and
10 committed terror attacks on our soil.

11 Al-Qaeda's, to be specific, recent attacks in
12 Charlie Hebdo. People living in France traveling to
13 Yemen, specifically to Yemen, received training, went back
14 to Paris and carried out atrocities, slaughtering people.

15 That is the face of terrorism, in this country.
16 It is shifting. They're recruiting homegrown people to
17 commit acts of terrorism on our soil. That is why this
18 case is important.

19 But this defendant did not get to travel. He
20 attempted to join al-Qaeda. He also encouraged his
21 codefendant who was younger. This defendant had converted
22 before Mr. Kaliebe. He was older than him. He not only
23 provided encouragement for Mr. Kaliebe, he provided
24 financial assistance to help him.

25 THE COURT: Anything further?

1 MR. DURHAM: Just a couple of things, your
2 Honor.

3 With respect to specific deterrence, this
4 defendant has had numerous interactions with law
5 enforcement. Yet none of these deterred him from
6 continuing to try to provide assistance to terrorist
7 organizations. He attempted to travel. Took every step
8 to get to Yemen. He just turned back when he faced the
9 authorities.

10 When he returned to the United States he was
11 interviewed by customs and border patrol. He lied to
12 them. He took another trip. And when he returned he was
13 interviewed by the FBI. He lied to them. Knowing that he
14 was under investigation he then attempted to obstruct the
15 investigation by destroying things. Numerous attempts,
16 numerous contacts with law enforcement where he could have
17 chosen to give up his terrorist acts. He didn't, he
18 continued.

19 For all of those reasons, deterrence as well as
20 to protect the public from further crimes from this
21 defendant, we're asking Court to sentence him to the
22 maximum.

23 MR. BOGATIN: Just your Honor, can I be heard?

24 Your Honor, opposing counsel talks about the
25 Boston marathon bomber. Clearly those cases are in a

1 class by themselves. There is nothing in the record.

2 THE COURT: Counsel, it is interesting you say
3 that. Everything, every crime, every defendant is in a
4 class by themselves, truly.

5 MR. BOGATIN: Yes, your Honor.

6 THE COURT: Go ahead.

7 MR. BOGATIN: I want to address your Honor's
8 comment. A certain Second Circuit judge wants, and when
9 my colleague says that this is an ordinary criminal case.
10 And a Second Circuit judge says there is no such thing as
11 an ordinary criminal case.

12 I'm sorry.

13 The 25 year sentence, life sentence is something
14 that would apply to a case where people were killed and
15 they got a 25 year to life sentence. There is nothing
16 that shows that Mr. Zea and the evidence to the
17 investigation that shows any type of conduct or any type
18 of plan, any type of plotted intended conduct on the part
19 of Mr. Zea. And which is, which is in that class, in that
20 category.

21 And with regard to, to emphasize the fact that
22 Mr. Zea has taken responsibility. He has pled. He pled
23 guilty at a very early stage in this proceeding. There
24 were no motions. There was no hearing that the government
25 had to bring out anything or submit material, or anything

1 like that. And the defendant has pled guilty and hasn't
2 denied his responsibility.

3 In this case, the obstruction, counsel addressed
4 the question of obstruction. There are a number of people
5 in the case. I have submitted in the material to the
6 Court that on obstruction. And they did not receive 25
7 years sentences.

8 Thank you, your Honor.

9 THE COURT: If you are referring to the burning
10 of the, the efforts to burn or otherwise destroy the
11 documentation on his computer? The obstruction --

12 MR. BOGATIN: That is the obstruction, yes, that
13 he gave it to a friend and asked the friend to empty out
14 the hard drive.

15 And your Honor, in furtherance of obstruction he
16 certainly didn't do it. I would venture that there are
17 certainly different levels of obstruction; telling a
18 witness to change his story or not to testify is --

19 THE COURT: Well, yes.

20 MR. BOGATIN: I submit somebody asking a
21 defendant to get their hard drive with no subpoena,
22 nothing outstanding, that could not be a crime. I
23 understand it is a crime today. But I just would submit
24 that I'm sure that many people would be surprised to learn
25 that it is a crime that you have a hard drive and no

1 subpoena.

2 THE COURT: We're not talk about other people
3 this morning. We're speaking of your client who destroyed
4 or sought to have others destroy information indicative of
5 a crime, our crimes under subpoena.

6 All right?

7 MR. BOGATIN: Yes.

8 THE COURT: All right, you have had a reply.
9 Does the government have anything to add?

10 MR. DURHAM: No, your Honor.

11 THE COURT: Does your client wish to say
12 anything prior to the imposition of sentence?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: That being said, the sentence will
15 be as follows. And understand that I have taken into
16 account all of the 3553 factors and the fact that he
17 doesn't have any prior convictions, of course.

18 But I am particularly focused right now on both
19 personal deterrence, which I think the government has
20 properly laid out as an issue in this case. Because
21 despite efforts by others to dissuade the defendant and in
22 fact actually roadblocks that were placed in his path, he
23 continued to pursue efforts to further along, if not his
24 own ability to join these groups, then to help others do
25 so.

1 So, I think there is a definite need for
2 consideration of personal deterrence here. I also think
3 that there is a need for general deterrence here because
4 this is, as you have said, a most serious crime. And I
5 think that there has to be a message sent to others that
6 this is absolutely not acceptable behavior. I think that
7 message has to be sent, sadly in light of the times in
8 which we are living.

9 As you already indicated the nature and
10 circumstances of the offense conduct are very serious.
11 And I also think there is a need to always protect the
12 public.

13 So taking all of those things into account, and
14 of course the Probation Department, the sentence will be
15 as follows:

16 On Count Three, 180 months of incarceration with
17 three years of supervised release.

18 On Count Four, 120 months of incarceration,
19 consecutive to Count Three, with three years of supervised
20 release.

21 Totalling the 300 months that was the maximum
22 agreed upon in the plea agreement.

23 Special conditions of supervised release. As to
24 those conditions they will include the following.

25 For a period of six months the defendant will

1 comply with a curfew via electronic monitoring directed by
2 the United States Probation Department and will remain at
3 his place of residence from seven p.m. to seven a.m. And
4 the probation department may as well designate another
5 twelve hour time period if the defendant's employment,
6 education and/or observance of religious services in any
7 way precludes the above specified time.

8 The curfew shall commence on a date approved by
9 the probation department. And the defendant shall wear an
10 electronic monitoring bracelet or a similar tracking
11 device, and follow all requirements and procedures
12 established for that curfew by the probation department,
13 and shall pay any costs associated with it to the extent
14 to which he is able. And because of that he will have to
15 submit all of his financial information to the probation
16 department so that they can properly assess his ability to
17 pay for that monitoring.

18 He shall not associate in person or through any
19 type of mail, electronic mail, or telephone, or any other
20 means of communication that may be available at the time
21 that he is actually under supervised release. Because I
22 know that there may be methods of communication after that
23 lengthy period to which he is being sentenced for
24 incarceration, that we can not envision today; so in any
25 way he will be precluded from communicating with any

1 individual or association to any organized crime groups,
2 or any criminal enterprise including any terrorist group.

3 He shall not possess a firearm, ammunition or
4 any type of destructive device. And there is a search
5 condition. There is a \$100 special assessment.

6 And the defendant shall submit his person,
7 property, house, residence, vehicle, papers, computers,
8 anything that is under his control, data storage devices
9 or media, anything that is under his control to a search
10 conducted by any United States probation officer. And
11 failure to submit to any search may be grounds for
12 revocation of release.

13 He shall warn any other occupants of the
14 premises that it may be subject to search pursuant to this
15 condition. And an officer may in fact conduct a search
16 pursuant to this condition when reasonable suspicion
17 exists that the defendant has violated a condition of his
18 supervision, and that the areas to be searched contain
19 evidence of this violation. Although any search must be
20 conducted at a reasonable time and in a reasonable manner.

21 That concludes the sentence of the Court.

22 MR. DURHAM: Your Honor, just a couple of
23 housekeeping items.

24 The special assessment is \$100 for each count?

25 THE COURT: Right, \$200, yes.

1 MR. DURHAM: And the Court is finding the
2 defendant has no ability to pay a fine, correct?

3 MR. BOGATIN: Your Honor, yes. The defendant
4 has no assets since he has been incarcerated, obviously.

5 MR. DURHAM: And lastly, I'll just put on the
6 record that there was an appellate waiver. But can we
7 just have the Court ask defense counsel to advise him of
8 any appellate rights he may have.

9 THE COURT: Of course. You will advise him of
10 his right to appeal, correct?

11 MR. BOGATIN: Yes, your Honor.

12 And one housekeeping point. And would the Court
13 recommend to the Bureau of Prisons that he be designated
14 close to the family who is present in court? His parents,
15 his siblings, they have been visiting him once a week at
16 Brooklyn MDC. And they would like to visit him.

17 THE COURT: I never take a position on that.
18 The Bureau will determine where he should be placed. And
19 I will make no recommendation.

20 MR. BOGATIN: Yes, your Honor.

21 And I believe there are open counts.

22 MR. DURHAM: Lastly, your Honor, we move to
23 dismiss Counts One, Two and Five.

24 THE COURT: And you certainly join in that,
25 correct?

1 MR. BOGATIN: Yes.

2 THE COURT: And that is approved.

3 Thank you.

4 MR. BOGATIN: Thank you, your Honor.

5 (The proceedings were concluded at 11:23 a.m.)

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